IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 935 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAFULBHAI ISHWARBHAI PATEL

Versus

DHWANI UTPALKUMAR PATEL D/O NAYANKUMAR PATEL

Appearance:

1. Criminal Misc.Application No. 935 of 2002

MR RR TRIVEDI for Petitioner No. 1-2

MR BHAVESH P TRIVEDI for Petitioner No. 1-2

MR CB DASTOOR for Respondent No. 1

MS SHALINI S MAIR for Respondent No. 1

Mr S S Patel, APP for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 26/06/2003

ORAL JUDGEMENT

This is a petition under section 482 of the Code

of Criminal Procedure, 1973 (for short, 'the Code') in order to challenge a criminal complaint being No.3779 of 2001 filed by the first respondent against the petitioner and three other accused persons before the court of learned Metropolitan Magistrate Court, Court No.4 at Ahmedabad for offences punishable under section 420, 498-A, 323, 504 and 114 of IPC and under section 3 and 7 of the Dowry Prohibition Act. It seems to be a matter of record that the first respondent had married with the first accused (not before this court) on 24.5.2001. As per the case of the contesting respondent, at the time of marriage, the accused persons demanded money and other things and, therefore, as per their demand, cash amount of Rupees One Lakh was given to them. That at the same time, golden ornaments to the tune of 30 tolas were also given to them. Over and above the said cash and ornaments, some other articles were also given as per para 4 of the complaint page No.16. It is further stated in the complaint that after the marriage between, 24.5.2001 and 27.5.2001, the contesting respondent and her husband stayed at the place of the second petitioner, who is the sister of the father-in-law of the contesting respondent. The said house is situated at Nadiad. That at that time, all the accused persons (meaning thereby, including the present petitioners) told the contesting respondent that it would not be enough to have the aforesaid money but she would be required to pay an amount of Rs.20 lakhs so that she could go to USA. It is further stated in para 5 of the complaint that all the accused persons started demanding the said amount of Rs. 20 lakhs. That at that time, the contesting respondent replied that it was not possible to part with a huge amount of Rs.20 lakhs. That at that time the first accused, husband of the contesting respondent, got angry and started giving filthy abuses to the contesting respondent and insisted on arrangement for payment of Rs.20 lakhs. That the first accused had beaten the contesting respondent at the instance of accused No.2 to 4 (present petitioners are accused No.3 and 4 before the trial court). It is further stated in para 5 of the complaint that accused no.2 to 4 had told that the contesting respondent spoke too much and that though she wanted to go to USA, she had no monetary arrangement with her to do so. That the marriage was contracted on an assumption that they would get a sum of Rs.30 lakhs. Other allegations have also been made in para 5 of the complaint. Then there are further allegations more particularly against accused No.1 and 2. Incidentally, accused no.1 and 2 have migrated to USA. After the marriage and before the marriage also they were staying in USA. Accused No.1 is the husband of contesting

respondent. Accused no.2 is the uncle of accused no.1 and accused no.4 is the father's sister of the first accused. There is no serious dispute that accused no.3 and 4 both are staying at Nadiad.

2. The present petition has been filed with a view to quash the aforesaid complaint stating that no offence is made out against the present petitioners. Now, on reading paras 4 and 5, it is prima facie, apparent that there is an allegation that the relatives of the contesting respondent had paid Rs. One lakh along with the golden ornaments to the accused persons including the petitioners on their demand. This shows that this property was demanded at the time of the marriage of the contesting respondent with the first accused and the demand was made at the time of the marriage and the property was parted with in favour of the accused including the present petitioners at the time of marriage. In para 5, also it is apparent, prima facie that there was a further demand of Rs.20 lakhs. Even if we take it that this may not be treated strictly as a demand of dowry, but the demand of Rs.20 lakhs may be treated to be an element of mental cruelty prima facie for the purpose of this petition. Then, again in para 5 of the complaint, it is stated that the first accused had beaten the first respondent at the instance of other three accused persons including the present two petitioners. It has been argued that vague allegations have been made against the present petitioners. At the same time, it is pertinent to note that it has been specifically alleged in para 5 of the complaint that between 24.5.2001 and 27.5.2001, the contesting respondent had stayed with her husband at the residence of accused no.4 who happens to be petitioner no.2 in the present petition. Therefore, it is clear that prima facie, the incident took place at the residence of petitioner no.2 and, therefore, her presence at the time of the aforesaid incident may be prima facie inferred. It, therefore, cannot be inferred that prima facie, the persons staying away have been wrongly involved in the present offence. It also appears from the arguments that the marriage took place on 24.5.2001 at Nadiad and then the couple stayed at the residence of petitioner no.2 at Nadiad between 24 and 27.5.2001. Then between 10.6.2001 and 13.6.2001, the contesting respondent stayed at the place of her parents and on 16.6.2001 husband of the contesting respondent proceeded to stay in USA. It is also contended that he has never returned from USA thereafter and on the contrary, divorce petition has been filed by the husband of the contesting respondent in USA and notice thereof was received by the contesting

respondent in India. The aforesaid aspects, prima facie, show that it cannot be said that no ingredient of any offence has been made out on a bare reading of the said complaint. Learned Advocate for the petitioners has time and again argued that vague allegations have been made out against the petitioners and there is no reason to get them involved in the said allegations. It is further argued that the petitioners are not beneficiaries of the alleged amount of dowry or any other amount which may have been received or may be received hereafter by other two accused persons. Therefore, the petitioners have been wrongly involved and, therefore, the present petition may be allowed and the complaint be quashed against them. It is true that the allegations made in the complaint are in terms of the allegations made in paras 4 and 5. At the same time, it is also required to be seen that the marriage took place at Nadiad and after the marriage the couple stayed at the residence of petitioner No.2. This shows that there was closeness of relations between the four accused persons.

3. It is also required to be seen that there are some allegations in para 4 and 5 and the said allegations have been reproduced for ready reference as above. Even the subsequent events show the conduct of the husband is relevant which may not have any impact on the conduct of the present petitioners, but at the same time, it is also required to be considered that soon after going to USA, the husband has filed divorce petition and the notice has been received by the contesting respondent. This is also indicative of the allegations made in the complaint. In para 5 of the complaint it is further contended that the accused persons had told the contesting respondent that the marriage had taken place only on the pretext that they would get Rs. 30 lakhs, otherwise, many other girls were available for marriage to the first accused. The subsequent conduct of filing of divorce petition by the first accused is required to be read in connection with the above allegations made in para 5 of the complaint which prima facie, show that the allegations made in the complaint are not totally baseless but those allegations get prima facie corroborated from the subsequent conduct of the first accused.

4. In support of his argument, learned Advocate for the petitioner has relied upon certain decisions. First is in the case of Kans Raj v. State of Punjab (AIR 2000 SC 2324). There it has been observed that in case of dowry death, the in-laws of the deceased cannot be roped in only on ground of being close relations of husband of deceased. It is further observed that the overt acts

attributed to them should be proved beyond reasonable doubt. This is a decision subsequent to the conclusion of trial on appreciation of evidence. At present we have to go by the allegations made in the complaint against the present petitioners. The allegations have been reproduced hereinabove which prima facie shows involvement of the present petitioners and, therefore, the above decision may not come to the rescue of the petitioner.

5. Learned Advocate for the petitioners has also relied upon a decision in the case of Satvir Singh v. State of Punjab (AIR 2001 SC 2828). There in head note 'D', it has been observed that in a case of demand for dowry, the burden of proof that cruelty or harassment related to dowry lies on prosecution. There the further observation is with respect to definition of the word 'dowry' in section 304-B of IPC. It is further mentioned that customary payments in connection with birth of child or other ceremonies, are not enveloped within the ambit of dowry. Here we can find from para 4 of the complaint that some moveable items have been given at the time of the marriage towards 'pehramani' which may be excluded from the definition o dowry but so far as the payment of Rs. One lakh in cash and golden ornament of 30 tolas are concerned, they may not fall under the 'customary' payment. However, again it would be a matter of evidence and the question of fact which may be dealt with and decided by the court concerned at the relevant point of time.

5.1. In the case of Rishi Anand v. Govt. of NCT of Delhi (2002 Cr.L.J. 2022}. A complaint was filed by a divorced wife in respect of offence under section 406 of IPC. There brother of the husband was made accused. No allegation was made against him. None of the complainant's articles were entrusted to the accused at the time of marriage and, therefore, it was found that the complaint against him was liable to be quashed. The facts before us are quite different. Here it is a case where the marriage took place at the place of petitioner no.2 and according to the allegations made in para 4 and 5, the amount of dowry was paid on the demand of the accused and even the contesting respondent was beaten by the first accused at the instance of other accused persons including the present petitioners. Therefore, the facts of the case on hand are different.

5.2. In the case of Ajay Mitra v. State of M.P. (2003 cr.L.J. 1249), again it was a matter relating to an offence under section 420 of IPC. There the

appellant-company entered into a bottling agreement with complainant bottling company for a period of 5 years. Then there was a subsequent purchase of trademark of appellant Beverages company by another Industries. Bottling agreement between complainant was duly assigned to another industries. The said Industries had given notice terminating agreement. In the present case, we find that so far as the demand of dowry is concerned, there are prima facie allegations against the present petitioners. Same way, there are further prima facie allegations with respect to beating. It is required to be observed that beating itself is a physical cruelty and it also amounts to mental cruelty. Same way, demand of dowry or any other amount subsequent to marriage would also amount to an act of cruelty. It may not be physical cruelty but it would certainly amount to mental cruelty.

6. An argument has also been advanced by the learned Advocate for the petitioners that the petitioners were not party to the beating. It is not necessary that the petitioners themselves should have beaten the contesting respondent. It is enough if it is prima facie alleged that the first respondent was beaten at the instance of the present petitioner. The allegation is in para 5 of the complaint. On the other hand, a decision in the case of Rajesh Bajaj v State NCT of Delhi & Ors., reported in (1999) 3 SCC 259 makes it clear that it is not essential that a complaint should verbatim contain all the ingredients of the offence alleged so long as the factual foundation for the offence has been laid. Therefore, it cannot be said that the complaint produced with the petition does not disclose any offence prima facie. Even if some offences are made out, then also a complaint cannot be quashed. It therefore, cannot be said that the complaint does not disclose any offence prima facie. In that view of the matter, this is not a fit case for interfering with the complaint filed by the contesting respondent against the present petitioners for the aforesaid offence by invoking inherent jurisdiction under section 482 of the Code of Criminal Procedure, 1973.

7. For the foregoing reasons, this petition is dismissed. Rule discharged. Interim relief granted earlier stands vacated. The petitioners will appear before the trial court on 31.7.2003.

[D P Buch, J.]

msp